

- (F) Energy charge per unit;
- (G) Megawatt hours purchased or sold;
- (H) Price; and
- (I) The delivery points used to effect the sale or purchase.

(12) *Historical transmission data.* The applicant must provide information concerning any transmission service denials, interruptions and curtailments on the merging entities' systems, for the most recent two years, to the extent the information is available from OASIS data, including the following information:

- (i) Name of the customer denied, interrupted or curtailed;
- (ii) Type, quantity and duration of service at issue;
- (iii) The date and period of time involved;
- (iv) Reason given for the denial, interruption or curtailment;
- (v) The transmission path; and
- (vi) The reservations or other use anticipated on the affected transmission path at the time of the service denial, curtailment or interruption.

(e) *Mitigation.* Any mitigation measures proposed by the applicant (including, for example, divestiture or participation in a regional transmission organization) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the horizontal Competitive Analysis Screen as an additional post-transaction analysis. Any mitigation commitments that involve facilities (*e.g.*, in connection with divestiture of generation) must identify the facilities affected by the commitment, along with a timetable for implementing the commitments.

(f) *Additional factors.* If the applicant does not propose mitigation, the applicant must address:

- (1) The potential adverse competitive effects of the transaction.
- (2) The potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction;
- (3) The efficiency gains that reasonably could not be achieved by other means; and
- (4) Whether, but for the transaction, one or more of the merging entities

would be likely to fail, causing its assets to exit the market.

[65 FR 71014, Nov. 28, 2000; 65 FR 76005, Dec. 5, 2000]

§ 33.4 Additional information requirements for applications involving vertical competitive impacts.

(a)(1) The applicant must file the vertical Competitive Analysis described in paragraphs (b) through (e) of this section if, as a result of the proposed transaction, a single corporate entity has ownership or control over one or more merging entities that provides inputs to electricity products and one or more merging entities that provides electric generation products (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A vertical Competitive Analysis need not be filed if the applicant can affirmatively demonstrate that:

(i) The merging entities currently do not provide inputs to electricity products (*i.e.*, upstream relevant products) and electricity products (*i.e.*, downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same geographic market is *de minimis*; and no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(ii) The extent of the upstream relevant products currently provided by the merging entities is used to produce a *de minimis* amount of the relevant downstream products in the relevant destination markets, as defined in paragraph (c)(2) of § 33.3.

(b) All data, assumptions, techniques and conclusions in the vertical Competitive Analysis must be accompanied by appropriate documentation and support.

(c) The vertical Competitive Analysis must be completed using the following steps:

(1) *Define relevant products*—(i) *Downstream relevant products.* The applicant must identify and define as downstream relevant products all products sold by merging entities in relevant

downstream geographic markets, as outlined in paragraph (c)(1) of § 33.3.

(ii) *Upstream relevant products.* The applicant must identify and define as upstream relevant products all inputs to electricity products provided by upstream merging entities in the most recent two years.

(2) *Define geographic markets*—(i) *Downstream geographic markets.* The applicant must identify all geographic markets in which it or any merging entities sell the downstream relevant products, as outlined in paragraphs (c)(2) and (c)(3) of § 33.3.

(ii) *Upstream geographic markets.* The applicant must identify all geographic markets in which it or any merging entities provide the upstream relevant products.

(3) *Analyze competitive conditions*—(i) *Downstream geographic market.* (A) The applicant must compute market share for each supplier in each relevant downstream geographic market and the HHI statistic for the downstream market. The applicant must provide a summary table with the following information for each relevant downstream geographic market:

(1) The economic capacity of each downstream supplier (specify the amount of such capacity served by each upstream supplier);

(2) The total amount of economic capacity in the downstream market served by each upstream supplier;

(3) The market share of economic capacity served by each upstream supplier; and

(4) The HHI statistic for the downstream market.

(B) A similar table must be provided for available economic capacity and for any other measure used by the applicant.

(ii) *Upstream geographic market.* The applicant must provide a summary table with the following information for each upstream relevant product in each relevant upstream geographic market:

(A) The amount of relevant product provided by each upstream supplier;

(B) The total amount of relevant product in the market;

(C) The market share of each upstream supplier; and

(D) The HHI statistic for the upstream market.

(d) *Mitigation.* Any mitigation measures proposed by the applicant (including, for example, divestiture or participation in an Regional Transmission Organization) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the vertical competitive analysis as an additional post-transaction analysis. Any mitigation measures that involve facilities must identify the facilities affected by the commitment.

(e) *Additional factors.* (1) If the applicant does not propose mitigation measures, the applicant must address:

(i) The potential adverse competitive effects of the transaction.

(ii) The potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction;

(iii) The efficiency gains that reasonably could not be achieved by other means; and

(iv) Whether, but for the proposed transaction, one or more of the parties to the transaction would be likely to fail, causing its assets to exit the market.

(2) The applicant must address each of the additional factors in the context of whether the proposed transaction is likely to present concerns about raising rivals' costs or anticompetitive coordination.

§ 33.5 Proposed accounting entries.

If the applicant is required to maintain its books of account in accordance with the Commission's Uniform System of Accounts in part 101 of this chapter, the applicant must present proposed accounting entries showing the effect of the transaction with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis), the effect on the income statement, and the effects on other relevant financial statements. The applicant must also explain how the amount of each entry was determined.

§ 33.6 Form of Notice.

The applicant must include a form of notice of the application suitable for